

C. P. Div.]

REGINA V. TAYLOR.

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REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

HIGH COURT OF JUSTICE—COMMON PLEAS DIVISION.

REGINA V. TAYLOR.

Lord's Day Act, Con. Stat. U. C. cap. 104—Shaving.

The defendant, a barber, was convicted before a Justice of the Peace for exercising the worldly labor and work of his ordinary calling by shaving customers for hire at his shop on Sunday, contrary to the Lord's Day Act, Con. Stat. U. C. cap. 104. Upon *certiorari* motion was made to quash the conviction on the ground that shaving was an act of necessity within the exception of the Act.

Held, (1) that a barber is a workman within the Act; (2) that shaving by a barber in the ordinary cause of his business is a violation of the statute, and not a work of necessity or charity.

Philips v. Innes, 4 Cl. & F. 234, approved.

Quare, whether a barber in an hotel or boarding-house might not, by arrangement with the keeper, be deemed a servant, to do the work of shaving guests or the family on Sunday.

[February 18, 1882.]

The defendant, A. P. Taylor, a barber, was convicted before Thomas Carr, a Justice of the Peace, for having exercised the worldly labour and work of his ordinary calling by shaving customers for hire at his shop in Yorkville, on Sunday, and fined \$2 and costs. The conviction and evidence having been removed by *certiorari* into the Common Pleas Divisional Court, a motion was made to quash the conviction before WILSON, C.J., which was referred to full court.

Ritchie, for defendant.—The shaving of customers by a barber is a work of necessity within the meaning of the exception in the Lord's Day Act.

Fenton, County Crown Attorney, contra, relied on *Philips v. Innes*, 4 Cl. & F. 234.

WILSON, C. J.: The statute in question (C. S. U. C. ch. 104), is as follows: "It shall not be lawful for any merchant, tradesmen, artificer, mechanic, workman, laborer, or other person whatsoever on the Lord's Day to sell or publicly show forth, or expose or offer for sale, or to purchase any goods, chattels or other personal property, or any real estate whatsoever, or to do or exercise any worldly labor

business or work of his ordinary calling (conveying travellers or Her Majesty's mail by land or by water, selling drugs and medicines, and other works of necessity, and works of charity, only excepted).

The defendant is, in my opinion, a workman—one of the class of persons named in the statute. The act of shaving he is charged to have performed as a barber is an act that was done by him in the ordinary course of his business as a barber, and it was done on the Lord's Day, and was not a work of necessity or charity. It was that kind of worldly labor which the statute expressly forbids being done on that day.

The case of *Philips v. Innes* 4 Cl. & F. 234, applies very closely to this case, because the House of Lords declared the business of a shaving by a barber on Sunday was not "a work of necessity or mercy," which is the language of the Scotch Law. In that case the master was attempting to compel his apprentice to serve in the shop on Sundays till about 10 a.m., and to shave the customers of his master, who frequented the barber's shop on that day for the purpose of being shaved, and the decision was reversing the judgment of the Scotch Court, that the apprentice could not be required to do that which was unlawful to do on such a day.

It has been decided in England that a baker or cook may supply his customers with their meals prepared by such baker or cook at his usual place of business upon Sunday, because many persons have not the means of doing such work themselves, and it is of necessity that they must eat.

There is a great difference between such a business as that and carrying on the work of shaving. The business of a barber, I presume, could, while it was associated with that of surgery, have been carried on on Sunday. These two very dissimilar professions were united by the 32 Henry VIII. ch. 42, but were severed by 18 George II. ch. 15, because "the barbers belonging to the corporation have for many years been engaged in a business foreign to and independent of the practice of surgery"—a very satisfactory reason. Since then the barber is nothing more than a workman, one who performs mere manual labor, and he cannot lawfully exercise his calling on Sunday any more than any other workman may.